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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA No.8/2002

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14th July, 2011

M/S. LUCKY ENGINEERING WORKS (REGD.) & ANR. Appellants
Through: Mr. Pankaj Batra, Advocate.

VERSUS

SHRI G.S. CHADHA Respondent
Through: Mr. K.D. Kaushal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment and decree dated 29.11.2001 by which the suit of the respondent/plaintiff for recovery of advance price paid to the appellants/defendants with respect to a machine (which was not supplied) was decreed. The suit has been decreed for Rs.3,80,885/- alongwith costs and interest @ 12% per annum.

2. The facts of the case are that there was a contract between the parties on 24.8.1998, Ex.PW1/1, by which the appellants/defendants agreed to supply a machine " 30 inch working width Roto Gravier Single Colour printing machine with single station

coating machine roll to roll". The total price of the machine agreed to be paid was Rs.4,80,000/- and of which a sum of Rs.2 lacs was received in advance. The balance payment was Rs.2,80,000/-. The delivery period was six weeks.

3. It was not disputed before the trial Court that the appellants/defendants have in fact received total amount of Rs.3,50,000/- from the respondent/plaintiff/buyer i.e. Rs.2 lacs originally and thereafter two sums of Rs.1 lakh and Rs.50,000/- respectively. The issue which was urged before me was that time of performance was not the essence of the contract and there was no breach on the part of the appellant as the appellant/defendant was ready to deliver the machine for the first time in February, 1999 as stated in Ex.PW1/3, but which delivery was not taken. Subsequent to the letter Ex.PW1/3 dated 13.2.1999, there was certain correspondence exchanged between the parties, including Ex.PW1/4 dated 23.2.1999. In support of his argument learned counsel for the appellants also relies upon a judgment of the Supreme Court in the case of **Arosan Enterprises Limited Vs. Union of India 1999 (9) SCC 449.**

4. The fact of the matter is that the appellants could not manufacture and produce the machine within the contractual period of six weeks. The respondent/plaintiff was forced to pay an additional amount of Rs.1 lakh on 16.9.1998 although the contract Ex.PW1/1 dated 24.8.1998 did not require any further payment to be made till

the supply of the machine inasmuch as the balance payment was Rs.2,80,000/- with delivery period of six weeks meaning thereby that the balance payment would only be payable on delivery. Not only the appellants managed to extract an additional amount of Rs.1 lakh beyond as stipulated in the contract (and which the respondent/plaintiff paid inasmuch as it had already parted with a substantial amount of Rs.2 lacs, yet, the appellants did not supply the machine), the respondent/plaintiff thereafter was again forced to make payment of Rs.50,000/- through cheque No.228816 dated 29.10.1998. The period of delivery had expired in the meanwhile by about 7.10.1998. During this entire period and in fact till February, 1999 i.e. a period of 24 weeks, instead of six weeks, there was never offer of the appellants/defendants to deliver the machine. Even assuming that the time of performance is not the essence of the contract, the fact of the matter is that there cannot be interminable delay in supply of machine. Learned counsel for the appellants stressed the fact that once the time was not the essence of the contract, and the appellants vide Ex.PW1/3 dated 13.2.1999 offered to give the machine, it should be held that it was the respondent/plaintiff who was guilty of breach of contract. I may note that except writing Ex. PW1/3, there is no proof which was proved by the appellants that the machine was in fact ready when the notice dated 13.2.1999 Ex.PW1/3 was sent. The fact that the machine was in fact not ready even when Ex.PW1/3 dated 13.2.1999 was sent

becomes clear from the fact that the appellants disputed that certain parts of machinery were in fact not to be supplied, though, the contract is exhaustive so far as the machine to be supplied.

In view of the fact that the machine was really not ready and false stand was taken up that the machine was ready clearly shows that there is no scope for applicability of the judgment in the case of ***Arosan Enterprises Limited (supra)*** as cited by the learned counsel for the appellants.

A reference to para 5 of the written statement shows that the appellant/defendant admitted that by the end of November a heat control panel and 5 HPS. Motor with panel had not been fixed with the machine and which parts still had to be purchased by the appellant/defendant. This stand in the written statement shows therefore that the complete machine was in fact not ready in 1st week of November, 1998 and therefore clearly what was therefore the letter dated 13.2.1999 Ex.PW1/3 was only a ruse as nothing has been filed by the appellant thereafter to show that these parts were purchased.

5. In my opinion, one determinative issue which arose during the course of arguments in the present appeal was that the respondent agreed to make the payment of the balance amount of the machine even today so that the appellants should give the machine on payment of the complete price. When this was put to the appellant No.2, who is

present in person, he outrightly refused on the ground that machine was no longer available as the same was burnt in a fire. Further, when another proposal was put to the appellant No.2 as to whether he is ready to refund the amount received with reasonable interest, the appellant No.2 stated that he is not ready to return even a single rupee.

6. This Court is entitled to interfere with the impugned judgment and decree only if the trial Court takes one view which is illegal and which causes grave injustice which now is not so in the facts of the present case. The facts show that not only the machine was not ready, but, the respondent/plaintiff was forced to part with additional monies in the hope that he will receive the machine. Even before this Court, the appellants have taken a totally unacceptable stand of not being ready to supply the machine on payment of balance price or not agreeing to refund the advance price received with respect to the machinery with a reasonable rate of interest. The respondent was ready to accept any reasonable amount because he had already parted with monies to the appellants.

7. In view of the above, there is no merit whatsoever in the appeal. The appeal is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

JULY 14, 2011
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VALMIKI J. MEHTA, J.